U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 2 8 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a researcher in agricultural economics and food safety. At the time he filed the petition, the petitioner was an assistant research professor at the [redacted] Lexington, Kentucky. He has since accepted an assistant professorship of economics at [redacted] Tuscaloosa, Alabama. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In this decision, the term "prior counsel" shall refer to [redacted] who represented the petitioner until and including the filing of the Form I-290B Notice of Appeal. The term "counsel" shall refer to the present attorney of record, who filed the subsequent appellate brief.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 22, 2008. The petitioner's initial submission included research-related materials including a copy of his doctoral dissertation on the subject of

"Consumer Economics and Environmental Design." Other materials (including conference presentations and published articles) concern aspects of dairy farming, food safety, and other topics. The petitioner also demonstrated his participation in peer review of manuscripts by other researchers. These materials establish the petitioner's activity in his field, but activity is not, on its face, evidence of eligibility for the waiver. The petitioner must show not only his involvement in this research, but also the impact or significance of his work. For that information, we turn to other materials in the record.

Several witness letters accompanied the petition. Nearly all of the letters are from faculty members at [redacted] where the beneficiary earned his graduate degrees, or at [redacted] where he undertook his postdoctoral training. The only exception is [redacted], the emergency room director at [redacted] The petitioner identifies [redacted] as an "expert," but [redacted] a medical doctor, claimed no expertise in agricultural economics or food safety. [redacted] cited statistics and facts relating to agriculture and food safety, but did not discuss any specifics of the petitioner's research work. Instead, [redacted] simply predicted that the petitioner "will contribute tremendously to an improved environment."

Another witness with questionable expertise in the petitioner's field is [redacted] associate professor of mechanical engineering at [redacted] stated that the petitioner "has distinguished himself in the areas of quantitative economic analysis, precision agriculture research, and statistical analysis," but he did not establish his own credentials in those areas. [redacted] own background (including grant funding from Lockheed Martin Aeronautics Company and a fellowship at NASA Glenn Research Center) suggests that his work relates to the aerospace industry.

[redacted], associate professor of design at [redacted] called the petitioner "a promising and distinguished scholar" and listed the titles of some of the petitioner's research articles, but otherwise provided no substantive information about the impact or importance of the petitioner's work.

[redacted] senior director of [redacted] Center for Financial Responsibility and the petitioner's "major advisor" at [redacted] stated:

> [The petitioner's] dissertation topic required the integration of a working knowledge of economic theory, statistical methodology and advanced data extraction techniques into an analysis of income and expenditures involving consumer spending behaviors. He accomplished all of them at an exceptionally high level of performance. . . . The findings of his study are of significant help to various government agencies at federal, state, and local levels, and for the business sector as well. They will provide valuable data for researchers, consultants, educators, planners, government officials, and others concerned with solving consumer problems. The results can also be of great help to develop useful programs by the education or community agencies that may help in reducing the teacher recruitment and retention problems facing the education sector in the U.S.

[redacted] associate dean for research at [redacted] College of Agricultural Sciences and Natural Resources, offered comments similar to [redacted] above:

> I became familiar with [the petitioner in] 2001 when I was on his dissertation committee during his graduate studies at [redacted] His dissertation investigated expenditure behaviors of the United States consumers of manager and professional category, including teachers. In his research, he made one of the major scientific contributions primarily to identify and analyse emerging consumer issues and market practices that have the potential to have a significant impact on consumer outcomes. He determined factors affecting teacher recruitment and retention problems facing the education sector in the U.S. The results were significant and have important implications for various government agencies and business sectors as well.

The petitioner submitted no evidence to show that any private or governmental organizations have, in fact, relied on the findings set forth in the petitioner's dissertation.

Four [redacted] faculty members provided letters. [redacted] associate professor of farm management, supervised the beneficiary's postdoctoral training at [redacted] stated that the petitioner "has made significant contributions in the field of precision agriculture," but provided no examples. He claimed that the petitioner's "research work has been recognized both nationally and internationally," but did not elaborate except to state that the petitioner has obtained grant funding and presented his work at professional conferences. [redacted] did not state how reliance on grant funding and participation at conferences distinguishes the petitioner from others in his specialty.

[redacted] extension professor at [redacted] stated that the petitioner's postdoctoral "research has focused on precision agriculture, precision livestock farming, and production economics. In some of his research, the results showed the potentiality of reducing environmental pollution in dairy farms." [redacted] added that the petitioner "is currently involved in doing research on obesity issues to investigate consumer behavior and their eating habits so that policy makers can design strategies to mitigate obesity incidences." [redacted] claimed that the petitioner's "accomplishments . . . have already had a strong impact on the field of agricultural economics and consumer issues," but he did not elaborate on this point.

[redacted] stated that the petitioner "is particularly skilled in . . . the use of information technology . . . to improve the efficiency of US agriculture." [redacted] discussed the advantages of this technology, but did not identify any of the petitioner's achievements in that area.

[redacted] an assistant professor at [redacted] and one of the petitioner's collaborators, stated:

> The results of some of his research indicated that precision agriculture is profitable with environmental friendly [*sic*]. In some areas of his research, he used a model to address optimal resource allocation while reducing environmental pollution. He evaluated alternative management practices as they affect dairy farming decisions, profitability, and nutrient balances leading to a better understanding of precision livestock farming and its impact on the environment. . . .

> [The petitioner] is currently employed as an Assistant Research Professor in the Department of Agricultural Economics. His major role in [the] Food and Agribusiness Management Section is to conduct research on obesity, food safety and quality, in addition to other assignments.

For the most part, the letters discussed above focus on the intrinsic merit of precision agriculture (and other areas where the petitioner has worked), with very little information about the petitioner's specific achievements and contributions. Those witnesses who did provide details speculated that the petitioner's work may have significant influence in the future; they did not provide any concrete examples of existing impact.

The petitioner indicated that exhibit 15 of the initial submission consisted of "[e]vidence that [the petitioner's] research has been cited by other researchers in his field." The only material that appears to fit this description is the bibliography section of an article from [redacted] listing one of the petitioner's articles. The fragment submitted does not identify the article or any of its authors. Therefore, we cannot determine whether this is an independent citation or a self-citation by the petitioner and/or one of his collaborators.

We note that the petitioner claims to be "a member of professional and/or academic organizations which required outstanding achievement by its members." The petitioner documented his membership in two agricultural economics associations (one national, one regional), but he did not show that either organization has any membership requirements at all other than payment of dues. If the organizations do require the level of achievement that the petitioner claims, the petitioner has submitted nothing to show it.

On July 8, 2009, the director informed the petitioner that the director would deny the petition unless the petitioner submitted additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director noted the petitioner's "supporting letters are [mostly] from research associates, professors, and/or colleagues of the petitioner [and] speak more to the importance of the field of endeavor" than "to the petitioner's contributions to the field as a whole." The director stated that any further "evidence should clearly demonstrate the significance of the petitioner's efforts in the field."

In response, prior counsel stated that the petitioner

> Was the **FIRST** ever to successfully investigate and discover **that using variable rates of fertilizer, [soil] types and irrigation levels produced higher yield per acre compare with uniform application of inputs. . . . [The petitioner's] research has enjoyed widespread implementation and acceptance by both the scientific and agricultural community. Presently more than 200 farmers in the Corn Belt section of this country have begun utilizing [the petitioner's] method**. . . .

> Another notable discovery of [the petitioner] involves the United States almond trade with India. . . . After lengthy negotiations between the United States and India which centered around [the petitioner's] research, India agreed to revise its' [*sic*] plant quarantine regulations causing the United States profit on this import to increase $100 million dollars [*sic*] annually. . . .
>
> As established in the original submission as of May 2008, [the petitioner's] original scholarly work had been cited many times by other researchers in his field. Since that time [the petitioner's] prestige and recognition in his field has continued to expand.
>
> . . . [The petitioner's] citation record to date . . . now exceeds 100.

(Emphasis in original.) The petitioner did not submit documentary evidence to support prior counsel's claims. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Review of the record does not support prior counsel's claim that the initial submission showed "many" citations of the petitioner's work. As noted above, we can identify only one such citation. The accompanying exhibit index – which elsewhere describes individual exhibits in detail – refers only to "[e]vidence that [the petitioner's] work has been cited by other researchers." Therefore, the index did not identify specific, individual citations that are now missing from the record. Between the initial submission and prior counsel's subsequent letter, there is a clear pattern of referring to the petitioner's citation history in very vague and general terms, without ever identifying the "other researchers" who are said to be citing the petitioner's work.

The petitioner discussed what he considered his "most significant professional accomplishments." The petitioner claimed "quite substantial" accomplishments in implementing precision agriculture and precision livestock production, including a study that showed the advantages of sub-surface drip irrigation. The petitioner does not claim to have devised or improved that technique, only to have studied it.

The petitioner described other projects:

> [T]here risk management areas were tackled: a) examining poor yielding areas which do not cover operating costs . . . b) examining the use of yield maps along with economic criteria in correctly choosing land to enroll in Conservation Reserve Program . . . and c) examining the use of risk maps for various production practices in order to manage risk.
>
> . . . The results indicated that the project was well received by participants and accomplished the goal of providing decision aids useful in applying precision agriculture techniques in the reduction of risk. . . .

> [Another] study was to compare and contrast profitability of different dairy management practices while reducing environmental pollution due to nitrogen and phosphorus balances. . . . [T]he results indicated that productivity of crops increased with higher alfalfa quality. The dairy farm as a whole realized a higher profit than traditional methods.
>
> . . . I investigated the effect of phytosanitary practices imposed by [the] Indian Government on almond[s] shipped from [the] United States of America. . . . My research examined the impact of phytosanitary protocol of almond trade between the US and India and what would be the economic benefit if sanitary procedures are removed. The results indicated that . . . India would increase its almond imports by over 20,000 tons worth more than US $100 million a year if phytosanitary protocols are eliminated.

Simply describing the petitioner's work does not establish its importance, and the petitioner's estimation of the significance of his own work clearly lacks the required objectivity.

The petitioner submitted evidence of his continuing professional activity (including new published work and a job offer letter from [redacted] and additional witness letters. All of the new letters are from [redacted] faculty members, most of whom had provided letters with the initial filing. Therefore, the new letters are not direct evidence that the beneficiary's work at [redacted] has attracted any attention outside of his own circle of colleagues and collaborators.

[redacted] second letter on the petitioner's behalf is similar to the petitioner's own statement, describing details of the petitioner's work without showing the greater importance or impact of that work, or showing the extent of the petitioner's original innovations as opposed to his study of methods devised by others.

[redacted] also described the petitioner's projects, and claimed that "India revised its plant quarantine regulations to lessen its tight import regulations." The record contains no documentary evidence to confirm this claim, or to show that the petitioner's work played any part in the "intensive negotiations" said to have led to that result. (Other witness letters mention India's restrictive policy but give no indication that India has changed or revoked that policy.) [redacted] claimed that the petitioner's "career as a researcher has already had a strong impact on the field of agricultural economics and consumer issues," but the record does not show that researchers at other institutions share this opinion.

[redacted] second letter is mostly identical to his first letter, with several sentences added at the end. [redacted] stated that the petitioner's research "topics are very important to the future of our agricultural industry and we need more researchers focusing on these topics. [The petitioner] has been helping a great deal in this area." As with his first letter, this second letter emphasizes the importance of the field of research rather than the value of the petitioner's specific contributions in that field.

[redacted] deemed the petitioner to be "creative, productive and experienced," and stated that the petitioner has demonstrated the effectiveness of precision agriculture. As with other witnesses, [redacted] did not show that the petitioner is responsible for any significant ideas or developments in precision agriculture, only that the petitioner has studied its implementation.

[redacted] Department of Agricultural Economics, discussed the petitioner's research findings and stated that his "contributions in these fields are significant."

The opinions of experts in the field are not without weight and we have considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions. On those occasions when witnesses provided specific examples of how the petitioner's contributions have influenced the field, the examples relate to small-scale experimental projects rather than widespread implementation, and the emphasis is on the petitioner's study of various methods rather than the innovation that produced those methods. Witnesses contradicted one another on whether India has adopted the petitioner's recommendations regarding almond import restrictions. The petitioner did not submit letters from independent references who affirm their own reliance on the beneficiary's work or who were even simply familiar with his work through his reputation. The petitioner also failed to submit corroborating evidence to lend weight to the reference letters.

The director denied the petition on November 24, 2009, stating that the new witness letters lacked empirical support. The director noted that the petitioner "failed to produce documentation of these 100 or more citations" claimed by prior counsel.

On appeal, counsel maintains that the petitioner's "research in the field of Agricultural Economics and Food Safety has been groundbreaking." Counsel goes on to describe this research, but the petitioner provides no objective evidence of its importance despite being advised, repeatedly, that the lack of such evidence was a critical flaw in the petition. If the director denied the petition for lack of corroboration, the petitioner cannot remedy this with more uncorroborated claims. Several of the uncorroborated claims on appeal appear simply to repeat statements from witness letters, sometimes transforming statements of future potential into claims of realized fact. For example, counsel claims that the petitioner's study of almond imports "cause[d] the United States profit on this import to increase $100

million dollars [*sic*] annually." Counsel cites no source for this figure, although earlier submissions contained the speculation that a change in India's import policy *could* result in such an increase.

Counsel makes no attempt to document prior counsel's claim of over 100 citations of the petitioner's published work. Counsel does not mention citations at all, and appears instead simply to have abandoned that unsupported claim.

Because the petitioner has essentially forfeited multiple opportunities to submit documentary evidence to support his claims and those of his close associates, we must assume that the petitioner is either unwilling or unable to submit such evidence. We agree with the director's decision to deny the petition.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.